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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,190	10/06/2003	Paul Hayward Kelly	DIXI01-00015	2344

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EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/678,190

Applicant(s)

KELLY ET AL.

Examiner

Michael Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 10-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 2-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10062003</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

1. Applicant's election of invention I with traverse of the restriction requirement in on 11/20/06 of the restriction requirement of 10/20 is acknowledged and made final.
2. Claims 1 and 10-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.
3. The bail cap of group II is a distinct subcombination feature from the staging zones with discharge assistant of group III. Either may be used separately or together.
4. Group I in claim 1 features a broad combination showing thereby showing to be an evidence claim, that the combinations are distinct from the subcombinations.
5. The Group IV method steps may be practiced on another device while the elected group II apparatus claims may be used with a plurality of methods.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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7. Claims 2-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Oden et al.

'490 (5713490) which discloses all the claimed elements including:

(Re: cl 2) a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity; a plurality of column walls defining a plurality of stack areas for storing product containers (c 3 L 47-c4 L 64);
a door pivotally mounted to the cabinet frame, said door being adapted to selectively close the central cavity (c2 L 31-37 of Denzer 3104779 incorporated by reference at c5 L 14-17);
an oscillator pivotally mounted at a lower portion of one of the plurality of stack areas, said oscillator including a frame defining a product retention zone (c4 L 64-c5 L 8);
and a bail cap attached to the oscillator, said bail cap including an intermediate portion adapted to selectively support product containers in said one of the plurality of stack areas, said bail cap being adjustable relative to the oscillator in order to accommodate product containers of varying sizes in the product retention zone (c 3 L 47-c4 L 64);
(Re: cl 3) wherein the bail cap is rotatably attached to the oscillator (c 3 L 47-c4 L 64);
(Re: cl 4) wherein the intermediate portion of the bail cap is arcuate in cross-section (fig 3 & 4)
(Re: cl 5) wherein the bail cap includes an adjusting element for selectively positioning the bail cap relative to the oscillator (c 3 L 47-c4 L 64);
(Re: cl 6) wherein the frame of the oscillator includes top, bottom and opposing end plates, said top plate including a plurality of notches adapted to receive the adjusting element (c 3 L 47-c4 L 64 ; fig 3 & 4);
(Re: cl 8) wherein the intermediate portion is asymmetrical so that mounting the bail cap to the oscillator in a first orientation establishes a first angular position of the bail cap relative to the oscillator, and mounting the bail cap to the oscillator in a second orientation establishes a second angular position of the bail cap relative to the oscillator, wherein the first and second angular positions correspond to particular product container sizes (c 3 L 47-c4 L 64);
(Re: cl 9) wherein said bail cap includes first and second end portions extending from the intermediate portion, said first and second end portions being snap-fittingly attached to the oscillator (Fig 3 ; C5 L 18-26).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

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matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim(s) 2-9 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Oden et al. '490 in view of Childers '813 (2890813) wherein the former discloses the elements previously discussed and the latter discloses any elements not inherently taught by the former including:

(Re: cl 7) wherein the adjusting element includes a sliding mechanism having first and second end stops, each of said first and second end stops being adapted to selectively seat within one of the plurality of notches to establish a desired angular position of the bail cap relative to the oscillator (Fig 4 & 5).

It would have been obvious for Oden et al. to slide the end stops to facilitate quick dispensate size adjustment as taught by Childers and come up with the instant invention.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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2/5/07


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